

REMARKS

Upon entry of this amendment, claims 1-26 remain pending in the application. By this paper, claims 1, 3-10, 13, 17-18, and 20-23 have been amended to provide clarity or in response to § 112 rejections. Reconsideration and allowance of the application in light of the amendments and arguments herein is respectfully requested.

35 U.S.C. §§ 112

The Office Action rejected claim 10 under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement upon reciting "wherein the alternate content is a null content." The Office Action also rejected claim 8 under 35 U.S.C. § 112, second paragraph, as being indefinite in reciting "the original content." Claims 23 and 21 have similar limitations to respective claims 10 and 8, and therefore are amended similarly to overcome the § 112 rejections.

Without conceding that the disputed language is not taught in the disclosure, the Applicants have amended the language of claims 10 and 23 to read "wherein the alternate content is not delivered." There is support for this limitation at least at page 3, last paragraph of the application where it teaches that "[i]n many cases simply not showing the ad is not an option and alternate content is required." The use of "many cases" implies "not all cases," which means that sometimes not showing the ad is an option and "alternate content is not delivered." The Applicants, therefore, respectfully submit that this amendment resolves any issues with the written description requirement, and requests the rejection be withdrawn.

The Applicants have also amended the language of claims 8 and 21 to read "subsets of the set of content elements," which is explicitly recited in respective claims 1 and 13 from which depend claims 8 and 21. As such, the Applicants respectfully submit that there remains no indefinite language in claims 8 and 21, and requests the rejection be withdrawn.

35 U.S.C. § 102(b) Rejections

Claims 1-6, 8-9, 11-19, 21-22, and 24-26 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,026,368 ("Brown"). The Applicants respectfully submit that Brown does not anticipate these claims because Brown fails to teach each and every element of the claims.

Claims 1 and 13 each, in part, recite:

determining whether or not the evaluation of the assumed frequencies warrants the delivery of alternate content;
providing a mechanism for the delivery of the alternate content; and
updating data stored in a communications network storage device to aid in determinations of whether the alternate content should be shown.

The Office Action points to column 17, lines 57-60 of Brown for "determining whether or not the evaluation of the assumed frequencies warrants the delivery of alternate content," but there is no discussion in Brown of "evaluation of the assumed frequencies." The Office Action points to column 6, lines 28-42 of Brown for "providing a mechanism for the delivery of the alternate content." The cited passage, however, teaches the use of queue building rules to develop prioritized queues for management. These queues are, therefore, prioritized in terms of delivery, but this is not the same as "alternate content" as referred to in claims 1 and 13, wherein a decision is being made whether or not to replace a subset of a set of content elements with "alternate content."

Similarly, there is no discussion of "alternate content" in Brown at column 3, lines 28-62 cited against "updating data stored in a communications network storage device to aid in determinations of whether the alternate content should be shown." There is discussion of rule developing to prioritize content "for a specific subscriber, subscribe profile, content location," etc., but not of completely alternate content to take the place of "a set of content elements" viewed by individual users.

Claim 13 further recites "establishing the assumed frequencies with which subsets of a set of content elements have been viewed by individual users of the

communications network environment for subsets of a set of publishers," which was not specifically rejected in the Office Action. Nowhere in Brown does it teach that "the assumed frequencies with which subsets of a set of content element have been viewed by individual users [is]. . . for subsets of a set of publishers." (emphasis added).

For at least these reasons, claims 1 and 13 are not anticipated by Brown. Likewise, claims 2-12 and 14-26 are not anticipated by Brown by virtue of their dependency from respective independent claims 1 and 13.

Claim 3 recites "wherein a publisher within the communications network environment is provided with a mechanism to provide the alternate content that is independent of other publishers within the communications network environment." The Office Action cites to Brown, column 5, lines 30-39 for this limitation. This passage, however, actually teaches away from the limitation because it teaches "an architecture that must support a large number of advertisers, content segments and subscribers, the remaining logical components of the processing components of the exposure accounting module 30 [] should be deployed on a single computing platform." Claim 3, in contrast, recites a mechanism to provide alternate content that is "independent of other publishers within the communications network."

Claims 4 and 17, as amended, recite "wherein the data used in determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of alternate content is stored in a web browser of an individual user." The Office Action cites to Brown, column 5, lines 18-29 for this limitation. This passage teaches an on-line queue manager platform with disk storage units attached thereto, which provide play lists remotely (e.g. through telecommunications connections) and which "allow for the off-line components to reside in remote geographic locations relative to the on-line queue manager site." The passage does not, however, teach that such remote locations are in web browsers of an individual user.

To the contrary, Brown teaches a preferred embodiment of housing all data files for queue-related databases in the disk storage units attached to the on-line queue manager platform. Col. 5, lines 18-48. That is, the architecture "should be deployed on a single computing platform. The data files that support these processing components are preferably housed on dedicated disk storage units." Col. 5, lines 36-38.

Claims 8 and 21, as amended, recite "wherein the delivery of the alternate content can be aborted and the subsets of the set of content elements can instead be delivered." The Office Action recites to Brown, column 5, lines 40-48 for this limitation. This passage, however, teaches as noted before, generating priority queues based on targeting data and rules stored in disk storage units. It also teaches adjusting priorities for campaigns that are in danger of not meeting exposure goals. While it does teach adjustment of priorities, Brown does not teach aborting the use of "alternate content" altogether to instead deliver "the subsets of the set of content elements" originally destined for delivery.

Claims 9 and 22, dependent from claims 8 and 21, respectively, recite "to abort the delivery of the alternate content is triggered from an event selected" from:

- a. a time delay in the process of determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of the alternate content,
- b. a time delay in the delivery of the alternate content,
- c. an error in the process of determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of the alternate content, and
- d. an error in the delivery of the alternate content.

Claims 9 and 22 are submitted to be patentable for at least the same reasons as claims 8 and 21. Furthermore, Brown fails to teach any of the above-listed four triggers for aborting delivery of the "alternate content." The Office Action cites to Brown, column 12, lines 35-40 for triggers (a) and (b). This "exposure delay" of TABLE 6, however,

refers to a decision in playing a sequential segment, not whether "alternate content" should be aborted because of a time delay in either the decision for delivery of the alternate content or during such actual delivery. The Office Action cites to Brown, column 10, lines 18-23 for trigger (c). This passage, however, is related to errors found during building or editing a subscriber profile, and is not specific to errors found in deciding whether "the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of the alternate content."

Finally, the Office Action cites to Brown, column 21, lines 47-54 for trigger (d). This passage, however, uses error in the delivery of segments of content for the purpose of "updating existing records in the data base with values contained in the parameters of" an exposure update request. Col. 21, lines 25-30. Brown does not teach that the error will trigger at that moment "to abort the delivery of the alternate content."

Claim 14 recites "wherein the determination of whether the delivery of the alternate content is warranted for a particular user is based on the evaluation of the assumed frequencies with which particular subsets of a set of content elements have been viewed by the particular user within a particular subset of the set of publishers." The Office Action cites to Brown, column 3, lines 28-62 for this limitation. This passage, however, does not teach delivery of alternate content. It teaches the components needed, including rule developers, to build profiles to target content segments as described previously. There is no discussion of "delivery of alternate content" or that a decision to deliver the alternate content is based on "the evaluation of the assumed frequencies with which particular subsets of a set of content elements have been viewed by the particular user within a particular subset of the set of publishers." Indeed, there is no mention in Brown of "a subset of publishers."

35 U.S.C. § 103 Rejections

Claims 7 and 20 are rejected under 35 U.S.C. § 103(a) over Brown in view of U.S. Patent No. 6,826,594 (Landsman). Claims 10 and 23 are rejected under § 103(a)

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over Brown in view of U.S. Publication No. 2006/0089969 (Brown-2). Based on the amendments and argument as discussed above, the Applicants believe that these § 103(a) rejections are moot; likewise, claims 7, 10, 20, and 23 are patentable by virtue of their dependence from allowable base claims.

With this response, the application is believed to be in condition for allowance. Should the examiner deem a telephone conference to be of assistance in advancing the application to allowance, the examiner is invited to call the undersigned attorney at the below telephone number.

Respectfully submitted,

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